

RM-9082

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. _____
Table of Allotments,) RM- _____
FM Broadcast Stations)
(Tishomingo, Tuttle, Woodward,)
Mooreland, and Alva, Oklahoma))

To: Chief, Allocations Branch

SUPPLEMENT TO PETITION FOR RULE MAKING

Ralph Tyler ("Mr. Tyler"), permittee of KTSH(FM), Tishomingo, Oklahoma,¹ by his attorneys, hereby respectfully submits this Supplement to his Petition for Rule Making filed March 21, 1997, to provide a solution to a potentially mutually-exclusive allotment proceeding. In support, the following is shown.

Mr. Tyler on March 21, 1997, filed his Petition for Rule Making that proposes the reallocation of Channel 259C3 from Tishomingo, Oklahoma, to Tuttle, Oklahoma, and the modification of the license of KTSH to operate on Channel 259C3 at Tuttle. To accomplish this, Mr. Tyler has proposed to modify the license of KXLS(FM), Channel 259C1 at Alva, Oklahoma, to operate on Channel 260C1. KXLS is licensed to Chisholm Trail Broadcasting Co., Inc. ("Chisholm").² Mr. Tyler also noted that it would also be necessary to substitute Channel 292C1 for Channel 261C1 at Woodward, Oklahoma, and

¹An application for license to operate KTSH(FM) is pending before the Commission and the station is operating pursuant to program test authority.

²On June 25, 1997, Chisholm filed a Motion to Dismiss Mr. Tyler's "Petition for Rule Making and Request for Issuance of Order to Show Cause." Mr. Tyler timely opposed that motion, and Chisholm replied.

modify the license of KWFX(FM), Woodward, licensed to Classic Communications, Inc. ("Classic") to operate on Channel 292C1.

By letter dated June 11, 1997, the Chief, Audio Services Division ("ASD") wrote a letter to counsel for Classic in connection with a pending application for assignment of license of its sister station, KSIW(AM), Woodward, Oklahoma. As a matter peripherally related to the processing of the assignment application, the ASD noted that an associated multiple ownership study was based on the operation of KWFX on Channel 228A, while the license had been modified to operate on Channel 261C1 as a result of a rule making proceeding initiated by Classic, *i.e.*, *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, Woodward, Oklahoma*, 6 FCC Rcd 6628 (1990).

Although Classic directly represented to the Commission that it did not intend to pursue its upgrade, the Commission gave Classic one more opportunity to file an application, and Classic on August 11, 1997, did so. The ASD also noted that:

"[T]he Commission now has before it two mutually exclusive rule making petitions which involve KWFX-FM. The first petition, filed by FM 92 Broadcasters, Inc., requests that Channel 228A be allotted to Woodward, the KWFX-FM's license be modified from Channel 261C1 to 228A, and that Channel 261C1 be allotted to Mooreland, Oklahoma, as a first local service. The second petition, filed by Ralph Tyler, requests the reallocation of Channel 259C3 from Tishomingo to Tuttle, Oklahoma. To accommodate the reallocation, various other channel changes are requested, including the substitution of Channel 292C1 for Channel 261C1 at Woodward, and the modification of KWFX-FM's license accordingly. Although Classic will be made a party to rule making involving these two petitions if Classic does not pursue an application to move to Channel 261C1 within the allotted time, the Commission, on its own motion, could modify Tyler's proposal to the extent of proposing that KWFX-FM's from Channel 261C1 to 292A instead of Channel 292C1."

On July 11, 1997, FM 92 Broadcasters, Inc. ("FM 92") referred to in the quote, filed a Petition for Reconsideration of the ASD letter affording Classic additional time to file an application. FM 92 is a petitioner for the use of Channel 261C1 at Mooreland, Oklahoma. On August 15, 1997, Classic opposed the petition. Today, Mr. Tyler has filed comments on the Opposition.

In light of what appears to be a rapidly-forming Gordian Knot, Mr. Tyler herein suggests a solution to the apparent mutual exclusivity of the proposals. This could be dealt with in a forthcoming Notice of Proposed Rule Making which would initiate the rule making referred to in the long quote.

Attached hereto is a "Supplemental Technical Statement" prepared by Mr. Tyler's technical consultant. That statement indicates that, should the Commission assign Channel 261C1 to Mooreland, Oklahoma, as requested by FM 92, it will not be possible to allot Channel 260C1 at Alva, Oklahoma, and modify the license of KXLS to operate on that channel. Therefore, to accommodate all parties, the following solution is offered:

(1) Substitute Channel 292 for Channel 261 at Woodward and order KWFX to operate on Channel 292. Channel 292 can be used up to Class C1 at the present KWFX site;

(2) Allot Channel 283C1 to Mooreland which can be used at the allocation site proposed by FM 92;

(3) Substitute Channel 260C1 for Channel 259C1 at Alva, Oklahoma, and order KXLS to operate on Channel 260C1;

(4) Allot Channel 259C3 to Tuttle, with the modification of the license of KTSH to operate at Tuttle; and

(5) Delete Channel 259C3 from Tishomingo.

This is a simple solution, allows all parties to attain their goals, and permits the Commission to avoid resolving the mutual exclusivity in a rule making proceeding.

Wherefore, in light of the above it is respectfully submitted that the Commission accept and consider this information in connection with its consideration of a notice of proposed rule making in the above-captioned matter.

Respectfully submitted,

RALPH TYLER

By:



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August 27, 1997

Supplemental Technical Statement

Ralph Tyler
Tuttle, Oklahoma
August 1997

This Technical Statement is prepared on behalf of Ralph Tyler ("Tyler") who has proposed to assign Channel 259C3 to Tuttle, Oklahoma as that community's first local service. In order for that assignment to be made, Channel 259C1 at Alva would be changed to Channel 260C1 and the unused assignment of Channel 261C1 for KWFX would either revert back to its original Channel 228 or re-allotted to Channel 292.

FM 92 Broadcasters, Inc. now requests that Channel 261C1 be assigned to Mooreland, Oklahoma. With the assignment of Channel 260C1 at Alva, Channel 261 cannot be assigned to either Mooreland or Woodward.

Tyler proposes the following solution to these proposals:

Substitute Channel 292 for Channel 261 at Woodward and order KWFX to Channel 292. Channel 292 can be utilized up to a Class C1 using the present KWFX site.

Allocate Channel 283C1 to Mooreland. This channel can be used at the proposed allocation site as proposed by FM 92 Broadcasters, Inc.

Substitute Channel 260C1 for Channel 259C1 at Alva, Oklahoma and order KXLS to Channel 260C1.

Allocate Channel 259C3 to Tuttle

Delete Channel 259C3 from Tishomingo

These proposals will resolve all channel conflicts and allow a simple solution for all parties involved. This proposal simply adds Channel 283C1 at Mooreland to our original Proposed Rulemaking.

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Proposed Changes to FM Table of Assignments

| <u>Community</u> | <u>Present</u> | <u>Proposed</u> |
|------------------|---|--|
| Tishomingo | <u>259C3</u> , 202A ¹ | 202A |
| Tuttle | ----- | <u>259C3</u> |
| Woodward | 214C3, 221C3, 240A <u>261C1</u> , 266C, 272A | 214C3, 221C3, 240A 266C, 272A, <u>292C1</u> |
| Alva | <u>259C1</u> , 278C1, 289C2 | <u>260C1</u> , 278C1, 289C2 |
| Mooreland | ----- | <u>283C1</u> |

Tuttle proposed allocation site: N. Lat. 35° 17' 33", West Long 97° 42' 58"

Woodward proposed allocation site is the same as KWFX (N. Lat. 36° 25' 42", W. Lng 99° 24' 10")

Alva proposed allocation site is the same as KXLS (N. Lat 36° 35' 41", W. Lng 98° 15' 38")

Mooreland allocation site: N. Lat 36° 21' 24", West Long 99° 13' 37"

Bromo Communications, Inc.



William G. Brown

¹ Non-Commercial Channel 202A is currently an application (BPED-970127MD) which has already reach a cut off date without opposition.

CERTIFICATE OF SERVICE

I, Patricia A. Neil, a secretary in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on this 27th day of August, 1997, copies of the foregoing Supplement to Petition for Rule Making were hand delivered or mailed first-class, postage pre-paid, to the following:

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